

## **REMARKS**

Newly added Claim 11 is directed to the embodiment of the presently cancelled Claim 2.

The rejection of the claims under 35 U.S.C. 112 second paragraph is believed addressed and overcome by adopting the Examiner's suggestion clarifying the distribution of the acrylonitrile.

The claims stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative under 35 U.S.C. 103(a) as obvious over Matsumura et al (U.S. Patent 4,478,892).

As presently amended the claimed composition requires the content of the acrylonitrile (herein AN), C<sub>50</sub> value, to be 31 to 40 wt % and 30 to 40 wt % in the graft rubber and vinyl resin respectively. Matsumura that disclosed, column 3 line 65 to column 4 line 4, graft polymers having AN content of 60 to 85 % cannot validly be said to anticipate the claims as amended. Moreover, since Matsumura in the indicated text contains a clear teaching away from lowered AN content, it cannot be said to suggest or render obvious the invention as presently claimed.

The rejections over Matsumura are requested to be reconsidered in view of the present amendment and retracted.

The claims stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative under 35 U.S.C. 103(a) as obvious over Ott et al (U.S. Patent 4,009,227).

Examples 2-4 entail mixtures of graft polymer B-1 and B-3 and Example 1 entails a mixture of B-3 and SAN. Graft polymer B-1 having AN content of 12% has no relevance to the inventive composition that requires higher contents. The preparation of B-3 is said to take place by the "continuous monomer addition" a process that is largely similar to the procedure used in comparative example A.II (see the instant application page 13 line 21 et seq.- see lines 28-29) that results in AN distribution of 3.2%, a value placing it outside the scope of the present claims.

There is nothing in Ott to describe or suggest the inventive composition as presently claimed.

The rejections over Ott are requested to be reconsidered in view of the present amendment and retracted.

The claims stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative under 35 U.S.C. 103(a) as obvious over Eichenauer et al (WO 98/54238).

The rejection over the priority document of the present application is believed addressed and overcome by the enclosed declaration by Dr. Wenz. Accordingly the evidence by the expert Wenz is that the terms "C<sub>50</sub> -value" and "(C<sub>90</sub> - C<sub>10</sub>-value)" are art recognized and that their explanation provided in the CIP is therefore superfluous. Moreover, Wenz declares that the added text adds nothing of substance over that which was already disclosed in the parent application. The evidence therefore militates against the Examiner's assertion that the terms at issue are "meaningless without applicant's definition added to the specification" and his assessment that in the absence of the explanation the claims are unclear.

Reconsideration and withdrawal of the rejection over Eichenauer are requested.

Believing the above represent a complete response to the Office Action and that the application is in condition for allowance, Applicants request the earliest issuance of an indication to this effect.

Respectfully submitted,

By



Aron Preis  
Attorney for Applicants  
Reg. No. 29,426

Bayer Polymers LLC  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741  
(412) 777-3814  
FACSIMILE PHONE NUMBER:  
(412) 777-3902  
lo/PREIS/ap161



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION OF

HERBERT EICHENAUER

SERIAL NUMBER: 09/975,277

FILED: OCTOBER 10, 2001

TITLE: ABS MOLDING MATERIALS WITH ENHANCED WORKING  
PROPERTIES

**DECLARATION**

I, Eckhard Wenz, a Citizen of Germany, hereby declares as follows:

That I have studied Chemistry and hold a doctorate degree conferred upon me by the University of Berlin, Germany; and

That I have been in the employ of Bayer AG, the assignee of the captioned patent application since 1996, holding responsible positions in research and developments of polymeric compositions; and

That I have authored more than 20 technical relating to my field of expertise;  
and

That I have read the text of the captioned patent application and of its parent and been appraised of the issue raised in the course of its prosecution in respect to the clarity of certain included terms, specifically "C<sub>50</sub> -value" and "C<sub>90-10</sub>- value" (herein Terms)

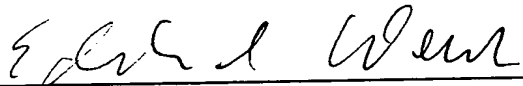
That the Terms are art-recognized, unambiguous and clear to the art-skilled;

That the text included in page 10 line 4 -29 of the captioned Patent Application is nothing more than a decidedly superfluous explanation of the Terms;

That in my opinion the text at page 10 lines 4-29 adds nothing of substance over that which was already disclosed in the parent patent application, serial number 09/424,094 filed November 18, 1999.

The undersigned Declarant declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States code and that such willful false statements may jeopardize the validity of pending Application Serial Number .09/975,277 or any patent issuing thereon.

Signed at Dormagen (Germany) this 19. day of November, 2003.

  
Eckhard Wenz